

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION**

THIS DOCUMENT RELATES TO:

State of Montana v. Abbott Labs., Inc., et al.,
CA No. 02-CV-12084-PBS

)
)
)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Judge Patti B. Saris
)
) Chief Magistrate Judge Marianne B.
) Bowler
)

**AFFIDAVIT OF MICHAEL DOSS IN SUPPORT OF BAYER'S
MOTION FOR LEAVE TO FILE A NOTICE OF SUPPLEMENTAL FACTS**

MICHAEL DOSS states on oath that:

1. I am a partner at Sidley Austin LLP and represent Bayer Corporation ("Bayer") in the case of *State of Montana v. Abbott Labs, Inc., et al.*, CA No. 02-CV-12084-PBS, which is part of the multi-district litigation currently pending before the Court captioned *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, CA No. 01-12257-PBS.

2. Bayer's First Motion to Compel Plaintiff the State of Montana to Produce a Rule 30(b)(6) Witness (the "Motion") seeks to compel Montana to designate a witness to testify concerning Montana's use of the Average Sales Price ("ASP") data provided by Bayer since 2001 "in evaluating, revising, or setting payments" under Montana's Medicaid Program.

3. On or about June 8, 2006, the State of Montana ("Montana") produced to Bayer for the first time certain ASP-related documents located in the State's files which were responsive to Bayer's January 31, 2006 request for production. (*See* June 8, 2006 Letter from H. Westre to M. Doss, attached hereto as Ex. A.)

4. Included in this document production on June 8, 2006 was a handwritten comparison of Bayer ASP information to published Average Wholesale Prices ("AWPs") for every drug Bayer marketed in the second quarter of 2001. A true and correct copy of this comparison chart is attached hereto as Ex. B. (*See* MT 038330-331.)

5. Montana also produced at this time an email from 2001 reflecting its communications with providers of state Medicaid management services concerning the use of Bayer ASP information. A true and correct copy of this email is attached hereto as Ex. C. (*See* MT 038141.)

6. These documents are material to Bayer's Motion, in that they appear to reflect active evaluation and consideration of Bayer's ASP information by Montana Medicaid.

FURTHER AFFIANT SAYETH NOT

/s/ Michael Doss

Michael Doss

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000
(312) 853-7036

Dated: June 27, 2006

Subscribed and sworn to before me
this 27th day of June, 2006.

/s/ Linda M. Vogel

Notary Public

Linda M. Vogel
Notary Public, State of Illinois
My Commission Expires August 15, 2009

EXHIBIT A



HEATHER M. WESTRE
DIRECT • (206) 268-9316
HEATHERW@HBSSSLAW.COM

HAGENS BERMAN
SOBOL SHAPIRO LLP

June 8, 2006

Via E-Mail & First Class Mail

Mr. Michael P. Doss
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603

Re: Montana AWP Litigation

Dear Michael:

Enclosed you will find the following bates numbered documents: MT 037913 (CD), MT 037965-037974, MT 037993-038026, MT 038058-038068, MT 038082-038113, MT 038141-038142, MT 038188-038251, MT 038264-038413, MT 038428-038439, MT 038473-038506, MT 038520-038580, MT 038594-038626, MT 038650-038672, MT 038692-038696, MT 038719-038728, MT 038753-038867, MT 038918-038950. These Bayer documents were located in the State of Montana's files. They have not been produced to other defendants. Please distribute as your client finds necessary.

Sincerely,

HAGENS BERMAN SOBOL SHAPIRO LLP

A handwritten signature in black ink, appearing to read 'Heather Westre', written over a horizontal line.

Heather M. Westre
Assistant to Jeniphr A.E. Breckenridge

Enclosure

EXHIBIT B

Division: Pharmaceutical
Report: Average Selling Price

Bayer Pharmaceuticals - Quarter 2001/02
Average Sales Price Quarterly Report

1 of 2

Texas
AMP?

NDC	Product Code	Product Name	<u>AWP</u>	Average Sales Price
00026-2521-06	252110	PRAZIQUANTEL	11.90166	9.711369
00026-2613-01	261320	DOME-PASTE BANDAGE 3"	15.1000	12.243365
00026-2614-01	261440	DOME-PASTE BANDAGE 4"	16.54000	13.445070
00026-2855-48	285530	NIMODIPINE	6.99970	5.550694
00026-2855-70	285540	NIMODIPINE CAPS UNIT DOSE PKG/30	7.82400	5.852133
00026-2861-51	286110	ACARBOSE TABLET 50MG BOTTLE OF 100	0.57550	0.439192
00026-2861-48	286120	ACARBOSE TABLET 50MG UD BOTTLE OF 100	0.60450	0.448962
00026-2862-51	286210	ACARBOSE TABLET 100MG BOTTLE OF 100	0.74220	0.552475
00026-2863-51	286310	PRECOSE 25MG	0.57550	0.433773
00026-2883-51	288310	BAYCOL .2MG TABLETS	1.54530	1.207532
00026-2883-86	288350	BAYCOL .2MG BTL. 90	1.62244	1.133151
00026-2884-51	288410	BAYCOL .3MG TABLETS	1.62250	1.470879
00026-2884-86	288450	BAYCOL .3MG BTL. 90	1.62244	1.137914
00026-2885-51	288510	BAYCOL .4MG BTL. 100	1.62250	1.351661
00026-2885-69	288540	BAYCOL .4MG BTL. 30	1.62300	1.160876
00026-2885-86	288550	BAYCOL .4MG BTL. 90	1.62244	1.152853
00026-2885-*9	288599	BAYCOL .4MG DRUM		0.593236
00026-2886-69	288640	BAYCOL .8MG BTL. 30	2.41933	1.731919
00026-2886-86	288650	BAYCOL .8MG BTL. 90	2.41922	1.656794
00026-3091-61	309110	CLOTRIMAZOLE CREAM 1%-15GM	0.74400	0.524791
00026-3091-59	309126	CLOTRIMAZOLE CREAM 1%-30GM	0.64900	0.527601
00026-3091-67	309186	CLOTRIMAZOLE CREAM 90G(2X45G) TUBES	0.36433	0.272386
00026-8151-20	815140	DACARBAZINE 200MG 20ML VIAL	27.7266	0.108105
00026-8161-15	816130	MITHRACIN 2500 size 10	98.73600	0.045324
00026-8196-36	819520	APROTININ INJECTION	2.27858	1.756227
00026-8197-63	819530	APROTININ INJECTION	2.27859	1.772422
00026-8511-06	851140	CIPRO CYCTITIS PACK	2.97500	2.264977
00026-8512-51	851210	CIPROFLOXACIN HCL 250MG BOTTLE/100	3.99120	3.091273
00026-8512-48	851220	CIPROFLOXACIN HCL 250MG 100'S UD	4.13420	2.985979
00026-8513-51	851310	CIPROFLOXACIN HCL 500MG BOTTLE/100	4.67180	3.064391
00026-8513-48	851320	CIPROFLOXACIN HCL 500MG 100'S UD	4.82740	3.242213
00026-8514-48	851420	CIPROFLOXACIN HCL 750MG 100'S UD	4.82740	3.429394

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Run Date & Time 8/29/2001 3:16:39PM

MT 038330

Division: Pharmaceutical
Report: Average Selling Price

Bayer Pharmaceuticals - Quarter 2001/02
Average Sales Price Quarterly Report

2 of 2

NDC	Product Code	Product Name	<u>AWP</u>	Average Sales Price
00026-8514-50	851430	CIPROFLOXACIN HCL 750MG BOTTLE/50	<u>4.67220</u>	3.626352
<i>ng/ml</i> <i>1/2 20</i> 00026-8562-20	851620	CIPROFLOXACIN IV 200MG VIALS		0.438203
00026-8564-64	851640	CIPROFLOXACIN IV 400MG VIALS	<u>0.72030</u>	0.470136
00026-8566-65	851660	CIPRO IV PHARMACY BULK PKGS	<u>0.64772</u>	0.335826
00026-8552-36	852520	CIPROFLOXACIN IV 200MG BAG	<u>0.15606</u>	0.090560
00026-8554-63	852540	CIPROFLOXACIN IV 400MG BAG	<u>0.15006</u>	0.087004
00026-8527-36	852720	CIPRO IV 200MG BAGS (BAXTER)	<u>0.15606</u>	0.091473
00026-8527-63	852740	CIPRO IV 400MG BAGS (BAXTER)	<u>0.15006</u>	0.087867
00026-8551-36	855110	CIPRO 5% ORAL SUSPENSION	<u>0.79820</u>	0.563428
00026-8553-36	855310	CIPRO 10% ORAL SUSPENSION	<u>0.93460</u>	0.703776
00026-8581-69	858140	AVELOX 400MG BTL 30	<u>9.06100</u>	6.423326
00026-8581-41	858170	AVELOX 400MG ABC PK 5'S	<u>9.06200</u>	6.421171
<i>MAC</i> 00026-8811-51	881110	NIFEDIPINE CAPSULES 10MG BOTTLE/100	<u>0.53670</u>	0.388449
00026-8841-51	884120	NIFEDIPINE EXT RLSE TAB 30MG BOTTLE/100	<u>1.29940</u>	0.808587
00026-8841-48	884130	NIFEDIPINE EXT RLSE TAB 30MG UNIT DS/100	<u>1.36430</u>	2.426860
00026-8841-54	884150	NIFEDIPINE 30MG BULK PKG/1000 DS/100	<u>1.29939</u>	0.887624
00026-8841-72	884160	NIFEDIPINE 30MG BULK PKG/5000 DS/100	<u>1.29939</u>	0.818870
00026-8851-51	885120	NIFEDIPINE EXT RLSE TAB 60MG BOTTLE/100	<u>2.31470</u>	1.309325
00026-8851-48	885130	NIFEDIPINE EXT RLSE TAB 60MG UNIT DS/100	<u>2.43030</u>	1.601643
00026-8851-54	885150	NIFEDIPINE 60MG BULK PKG/1000 DS/100	<u>2.31466</u>	1.350309
00026-8851-72	885160	NIFEDIPINE 60MG BULK PKG/5000 DS/100	<u>1.89544</u>	1.637234
00026-8861-51	886120	NIFEDIPINE EXT RLSE TAB 90MG BOTTLE/100	<u>2.63540</u>	1.607548
00026-8861-48	886130	NIFEDIPINE EXT RLSE TAB 90MG UNIT DS/100	<u>2.76740</u>	1.818312
00026-9711-01	971110	VIADUR KIT WITH IMPLANT	<u>5484.00000</u>	2,943.857143

MT 038331

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EXHIBIT C

Marr, Shannon

From: Buska, Jeff
Sent: Monday, December 10, 2001 4:18 PM
To: Marr, Shannon
Subject: FW: ASP Implementations

FYI

-----Original Message-----

From: Denmark, Cynthia [mailto:cynthia.denemark@eds.com]
Sent: Thursday, December 06, 2001 9:16 AM
To: 'Marvin Hazelwood'; donna.bovell@dc.gov; rowlarm@dhfs.state.wi.us;
mterrebo@dhhmail.dhh.state.la.us; lfarrand@dhhs.state.nh.us;
asseyj@dhhs.state.sc.us; jfine@dhhm.state.ma.us; dhillblo@dhs.ca.gov;
aruggle@dhs.state.ia.us; cdtepper@dhs.state.nj.us;
ehawkins@dma.state.ga.us; dshepher@dmass.state.va.us;
rashley@doh.state.ut.us; joeco@dpw.state.pa.us; childsa@dshs.wa.gov;
wellsj@fdhc.state.fl.us; mshirley@fssa.state.in.us;
coleenl@govmail.state.nv.us; pavarist@gw.dhs.state.ri.us;
David.Campana@health.state.ak.us; mrb01@health.state.ny.us;
John.Franklin@hhss.state.ne.us; duerrg@idhw.state.id.us;
SusanMcCann@mail.medicaid.state.mo.us; Debra.Bahr@mail.state.ky.us;
lsullivan@mail.tn.state.us; lljones@medicaid.state.al.us;
mfinch@medicaid.state.al.us; Suzette.Bridges@medicaid.state.ar.us;
phrrm@medicaid.state.ms.us; benny.ridout@ncmail.net;
pjeffrey@nt.dma.state.ma.us; reidr@odhs.state.oh.us;
NesserN@ohca.state.ok.us; james.zakszewski@po.state.ct.us;
allen.chapman@state.co.us; Mark.Petersen@state.ds.us;
ed.bauer@state.me.us; kenyonj@state.mi.us; Cody.C.Wiberg@state.mn.us;
jbuska@state.mt.us; sojoyb@state.nd.us; neal.solomon@state.nm.us;
Jesse.Anderson@state.or.us; SWHALE@state.wy.us;
Martha.McNeill@tdh.state.tx.us; paulw@wpgatel.ahs.state.vt.us; Peggy
King, R.Ph.
Subject: ASP Implementations

For those state who are using the Bayer ASP, are you adding a percent to the established ASP or are you using the ASP as a definition of ingredient cost?

MT 038141

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